

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

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|-------------------------------|---|-----------|
| MID-AMERICA PIPELINE COMPANY, |) | |
| |) | |
| Plaintiff, |) | 8:09CV370 |
| |) | |
| vs. |) | ORDER |
| |) | |
| WILSON EXCAVATING, INC. and |) | |
| DALE D. WILSON, |) | |
| |) | |
| Defendants. |) | |

This matter is before the court on the defendants' Motion to Continue a Decision on Plaintiff's Motion for Partial Summary Judgment Until Depositions Have Been Completed ([Filing No. 59](#)). The defendants filed a brief ([Filing No. 60](#)) and an index of evidence ([Filing No. 61](#)) in support of the motion. The court concludes no delay or expense is necessary prior to resolving this motion by waiting for the plaintiff to respond.

The defendants seek "adequate time," prior to having to respond to the plaintiff's Motion for Partial Summary Judgment ([Filing No. 53](#)), to complete the depositions on December 15, 2010, of Russell Edwards and "additional witnesses of the Plaintiff." **See** [Filing No. 60](#) - Brief p. 1. Specifically, the defendants state they have submitted an affidavit from Dale Wilson in opposition to the plaintiff's summary judgment motion, however they want to depose the plaintiff's affiant, Mr. Edwards, in order to highlight how his affidavit "lacks essential facts and foundation for the conclusions" contained therein. *Id.* at 2. The defendants deny any fault in the late scheduling of depositions. *Id.*

The court finds the defendants have had ample opportunity to complete essential discovery, as evidenced by Dale Wilson's affidavit, enabling them to oppose the plaintiff's summary judgment motion. **See** [Fed. R. Civ. P. 56\(d\)](#). Furthermore, incurring additional delay and expense prior to resolution of the plaintiff's summary judgment motion is unwarranted. In any event, although the motion relates to discovery, there is no evidence in the record that the defendants conferred with opposing counsel prior to filing. **See** [NECivR 7.0.1\(i\)](#). Accordingly, the defendants' motion may be denied on that basis as well. Upon consideration,

IT IS ORDERED:

The defendants' Motion to Continue a Decision on Plaintiff's Motion for Partial Summary Judgment Until Depositions Have Been Completed ([Filing No. 59](#)) is denied.

DATED this 18th day of November, 2010.

BY THE COURT:

s/ Thomas D. Thalken
United States Magistrate Judge

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